

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MICHAEL S JONES
3709 – 12TH AVE SW APT S-1
CEDAR RAPIDS IA 52404**

**COMPASS OF CEDAR RAPIDS LLC
C/o ADP-UCS
PO BOX 6501
DIAMOND BAR CA 91785**

**Appeal Number: 05A-UI-00434-H2T
OC: 11-21-04 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Able and Available
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 10, 2005, reference 01, decision that found him not able and available for work. After due notice was issued, a hearing was held on January 27, 2005. The claimant did participate. The employer did participate through Taya Roos, Human Resources and Accounting Assistant. Department's Exhibit D-1 was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a stagehand part time beginning June 21, 1999 through date of hearing as the claimant is still employed. The claimant was hired to work on an as needed

basis when events were being held at the U. S. Cellular Center. He is paid 14.43 per hour. His base period is comprised of only part time wages as is indicated by department's exhibit D-1.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant was hired to work whenever there is an event at the Cellular Center. His base period clearly indicates that he has never worked full time during any quarter. His base period is comprised solely of part-time wages. The claimant is still employed at the same hours and wages as when he was hired. Accordingly, he cannot be considered able and available for work as he is still employed at the same hours and wages as he was hired for. Benefits are denied.

DECISION:

The January 10, 2005, reference 01, decision is affirmed. The claimant is not able to work and available for work effective November 21, 2005. Benefits are denied.

tkh\pjs